that integrates an electronic order match system with a facility for brokering trades (SR–CHX–93–19; Release No. 34–35030). As originally filed, the rules contemplated only one match occurring per trading day.

The purpose of the proposed rule change is to amend the Chicago Match rules to accommodate two matches per trading day. As before, the matches will occur mid-day during the Exchange's primary trading session.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–19 and should be submitted by September 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–21501 Filed 8–29–95; 8:45 am]

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**[Release No. 34–36150; File No. SR–MSRB–95–13]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee Assessments and Reporting of Sales or Purchases, Pursuant to Rules A–13, A–14, and G–14

August 23, 1995.

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(2), notice is hereby given that on August 11, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–13). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Board is filing amendments to three of its rules to make certain changes in the fees assessed to brokers, dealers and municipal securities dealers (''dealers'') that engage in municipal securities activities regulated by the Board. The proposed amendments relate to the following rules: rule A–13, which currently provides for fee assessments based on underwriting activity; rule A–14, which provides for an annual fee paid by dealers to the Board; and rule G–14, which currently requires reporting of certain transactions in municipal securities to the Board for purposes of public price reporting and market surveillance. The proposed amendments are collectively referred to hereafter as ''the proposed rule change.'' The Board has planned that the proposed rule change will become effective October 1, 1995, to coincide with the beginning of the Board's 1996 fiscal year. The Board accordingly requests the Commission to approve the proposed rule change in such time as to allow it to become effective on that date.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

The purpose of the proposed rule change is to help provide sufficient revenues to fund Board operations and to allocate fees among dealers in a manner that, compared to the current fee structure, more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by: amending rules A–13 and G–14 to institute a new assessment of $.01 per $1,000 par value on all interdealer transactions that are required to be reported to the Board under rule G–14; amending rule A–13 to lower the current underwriting assessment from $.03 per $1,000 to $.02 per $1,000; and amending rule A–14 to increase the annual fee assessed to dealers from $100 to $200 per dealer.

*The Current Fee Structure*

The Board currently levies three types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–14 provides for an annual fee of $100 from each dealer who conducts municipal securities business during the year. Rule A–13 provides for an underwriting assessment, based on the par value of a dealer's participation

in primary offerings of municipal securities.

Rule A–12 and A–14 fees have been the same since their adoption in 1975 and 1977, respectively. The rule A–13 underwriting assessment fee historically has varied, based on new issue volume in the market and the Board's revenue needs. The underwriting assessment has ranged from a high of $.05 per $1,000 in 1976 to a low of $.01 per $1,000 in 1988. Since 1991, it has been set at $.03 per $1,000 par value for primary offerings of most long-term securities.[1] In 1992, a lower rate of $.01 per $1,000 was instituted for primary offerings of certain short-term securities.[2] The Board now bills dealers monthly for A–13 fees, based upon official statements sent to the Board under rule G–36.[3]

The rule A–13 underwriting assessment fee provides over ninety percent of Board revenues. The Board originally adopted the underwriting assessment so that the fee would best reflect each dealer's involvement in the municipal securities market, based on then-available data. Although there are exceptions, it is generally true that the activity of individual dealers in the underwriting business provides a rough gauge of their general transaction activity and overall participation in the market. However, even when originally adopting rule A–13 in 1976, the Board recognized that basing the rule A–13 fees exclusively on dealer participation in new issue offerings was an imperfect means to measure a dealer's participation in the market because, among other things, it does not reflect market activity occurring after the purchase of a new issue from an issuer. Notwithstanding this fact, a fee based on underwriting participation has, until now, been the best available means to create verifiable assessments that generally reflect a dealer's participation in that market.

*The Transaction Reporting Program Now Provides a New Mechanism to Measure a Dealer's Participation in the Market*

In January 1995, the Board launched Phase I of its Transaction Reporting Program. Under an amendment to rule G–14, on reporting of transactions, which became effective November 9, 1994,[4] dealers are required to report their inter-dealer transactions to the Board for use in the Transaction Reporting Program. This data is used for daily, public price and volume reporting and for the maintenance of a ''surveillance database'' of inter-dealer transactions which supports enforcement of the Board and Commission rules. Phases II and III of the Transaction Reporting Program, now scheduled for implementation in 1996 and 1997 respectively, will address the reporting of institutional customer and retail customer transactions.[5]

The surveillance database component of the Transaction Reporting Program now provides the Board, for the first time, with information on essentially all inter-dealer transactions executed in the municipal securities market. The Board accordingly believes that this data should be used to adjust the fees levied under rule A–13 so that those fees will more accurately reflect each dealer's participation in the market.

*Need for Revenue Increases*

In addition to the Board's desire to allocate assessments more accurately based on dealer participation in the market, the proposed rule change also is necessary to address a projected shortfall in Board revenues. The Board's current reliance on underwriting fees for the bulk of its revenues, combined with the sharp decline in new issue volume,[6] require Board action to bring projected revenues and expenses into balance. Because of declines in new issue volume, the Board's revenues from rule A–13 underwriting assessments have declined from about eight million dollars in fiscal year (''FY'') 1993 to approximately six million dollars in FY94,[7] and are projected to be approximately four million dollars in FY95. Since, as noted, the rule A–13 fees provide approximately ninety percent of Board revenues, this situation requires the Board action to adjust revenues to meet necessary expenditures.

The Board's expenses over the next several years will include costs of the Board's traditional rulemaking activities, and in addition will be affected by the development and continued operation of programs that support the Board's rules and the statutory purposes set forth in section 15B of the Securities Exchange Act. Several of these programs operate within the Board's Municipal Securities Information Library System. These include the Transaction Reporting Program, which provides transparency reports and maintains the market surveillance database, the Continuing Disclosure Information System for the collection and dissemination to the market of material event notices, and the Official Statement/Advance Refunding Document System, which maintains a comprehensive collection of official statements and escrow agreements, and provides electronic dissemination and archiving of such documents. These programs, along with the Board's rulemaking activities, professional qualification program and arbitration program, are expected to result in total expenses of approximately six-and-one-half million dollars in FY95 and approximately eight million dollars in FY96.

*Revenue Effect of the Proposed Rule Change*

Based on the Board's projection that FY96 inter-dealer transaction volume will be about $400 billion, the proposed transaction fee would add about $4 million per year to the Board's revenues in FY96. The lowering of the underwriting assessment fee by $.01 per $1,000, based on a projected new issue volume of $130 billion in FY96, would reduce expected revenue by approximately $1.3 million. The increase in the annual fee from $100 to $200 would result in an increase of approximately $275,000 in additional revenue. Accordingly, the Board estimates that the proposed rule change would create a net revenue increase from these sources of approximately $3 million for FY96. Together with fees assessed for users of the Municipal Securities Information Library and other

[1] As used in rule A–13, ''primary offering'' is defined as in Exchange Act Rule 15c2–12 on municipal securities disclosure. Primary offerings that have been assessed at $.03 per $1,000 under rule A–13 since 1991 are those municipal securities with a final stated maturity of two years or more and an aggregate par value of $1,000,000 or more. Since 1992, rule A–13 has, in addition, exempted from fee assessments those primary offerings which have a final stated maturity of nine months or less or which are ''puttable'' to an issuer at least as frequently as every nine months until maturity.

[2] Since 1992, the A–13 assessment has been $.01 per $1,000 for primary offerings with a final stated maturity of nine months or more, but less than two years, and $.01 per $1,000 for primary offerings which are puttable every two years or less. (The exemptions stated in the previous footnote have remained in effect.) The present proposed rule change does not affect the assessment fee for such offerings.

[3] Rule G–36 requires the underwriters of primary offerings to deliver the official statement, if one is produced for the primary offering, to the Board within 10 days of the date of sale.

[4] *See* Securities Exchange Act Release No. 34955 (November 9, 1994).

[5] *See* ''Transaction Reporting Program for Municipal Securities: Phase II,'' *MSRB Reports,* Vol. 15, No. 1 (April 1995), at 11–15.

[6] New issues of long-term municipal securities totalled $292 billion in 1993 and $165 billion in 1994. Based on new issue volume to date, the Board projects a total in 1995 of about $130 billion. *See* ''A Decade of Municipal Finance,'' *The Bond Buyer,* August 7, 1995, at 39.

[7] *See* ''Financial Statements—Fiscal Years Ended September 30, 1994 and 1993,'' *MSRB Reports,* Vol. 15, No. 1 (April 1995), at 57.

miscellaneous revenue sources, the total revenues under the proposed rule change are estimated to closely match expected expenses in FY96.

The volatility of new issue volume from year to year prevents an accurate prediction of the potential need for additional fee adjustments in FY97 and beyond. The Board has and will continue to examine new issue volume projections each year as part of its annual budget process. The Board intends to review in future years the possible uses of additional transaction data that will be provided by Phases II (institutional customer trades) and III (retail customer trades) of the Transaction Reporting System as mechanisms to adjust dealer fees even more equitably, based upon dealer participation in the market.

*Billing Procedures for the Transaction Fee*

Rule G–14 requires each inter-dealer transaction that is eligible for automated comparison to be reported to the Board through the National Securities Clearing Corporation (''NSCC''), the central facility provider for the automated comparison process. The Transaction Reporting Procedures under rule G–14 place primary responsibility for trade reporting on each dealer that executes an inter-dealer transaction (the ''executing dealer''). However, the rule G–14 Transaction Reporting Procedures allow executing dealers who are not direct members of NSCC to use other mechanisms to report transactions. Some executing dealers report transactions directly to NSCC through other dealers that are members of NSCC (''clearing dealers''). This is typically the case in an introducing/clearing broker arrangement.[8]

Rule G–14 generally requires both the ''buy'' and ''sell side'' of an inter-dealer transaction to report their transaction to the Board. Under the proposed rule change, the Board will bill only the seller in each transaction. The Board will bill only for those trades for which the buy and sell sides ultimately agree on trade details such as price, transaction amount and par value. Dealers will receive bills monthly.

The Board recently amended the rule G–14 Transaction Reporting Procedures to require each dealer reporting a transaction to include the identity of both executing dealers in the transaction, as well as both clearing dealers.[9] Compliance with this rule change however, has not yet reached a level at which the executing dealers can always be reliably identified from the information reported to the Board. Therefore, the Board will bill clearing dealers directly, providing with each bill information on the transaction volume associated with each executing broker that can be reliably identified based on the information submitted by the clearing broker, as well as information about any residual transaction volume that cannot be reliably associated with any executing broker.[10] The clearing dealer will be responsible for timely payment of the entire fee to the Board on behalf of the executing dealers for which it reports transactions. The Board expects clearing dealers to pass through these fees to executing dealers based upon transaction volume and this is provided for in the proposed change to rule A–13. As improvements are made in the timely and correct reporting of transactions under rule G–14, including correct identification of executing brokers, the Board will consider revisions in this procedure to accommodate direct billing of executing brokers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change affects all dealers equally and according to the same terms. Therefore, the Board does not believe that the proposed rule change places any burden on competition that is not necessary or appropriate, given the purposes of the Act.

The transaction fee on inter-dealer transactions will affect dealers in general proportion to their volume of inter-dealer transactions, and in particular, in proportion to the number and par value of transactions in which the dealer is the seller, rather than the buyer, of municipal securities in the inter-dealer market. The reduction in the underwriting assessment will offset, or partially offset, the transaction fee for dealers with underwriting businesses. However, for those dealers that previously did no underwriting business, the transaction fee may constitute a substantial net increase in fees paid to the Board. For example, for brokers' brokers the transaction fee will constitute a new fee based on the brokers' broker's activity in the market. However, the Board believes that the $.01 per $1,000 level of the fee is not unduly burdensome in light of the prominence of brokers' brokers in the municipal securities market. The Board also notes that this fee will affect all brokers' brokers equally.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board has requested that the proposed rule change be effective October 1, 1995, to coincide with the beginning of the Board's 1996 fiscal year.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[8] Some dealers also report transactions indirectly to NSCC through other clearing agencies registered with the Commission (*e.g.*, Midwest Clearing Corporation and Stock Clearing Corporation of Philadelphia).

[9] *See* ''Reporting Inter-Dealer Transactions to the Board: Rule G–14,'' *MSRB Reports*, Vol. 15, No. 2 (July 1995), at 15–17 (File No. SR–MSRB–95–22).

[10] Two specific compliance problems may result in trade reports that, although accurate with respect to price and par value, are unreliable with regard to identifying the executing brokers. First, a clearing dealer may agree with, or ''stamp,'' the data submitted to NSCC by its contra-party, to indicate it agrees with certain details of the trade (par value, price, etc.). However, currently the dealer who ''stamps'' the trade data does not necessarily agree with the executing brokers identified by the contra-party. Second, a clearing dealer may simply fail to identify correctly its own executing broker in its submission. These practices will become less common as the industry complies more fully with the dealer identification requirement.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–13 and should be submitted by September 20, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–21498 Filed 8–29–95; 8:45 am]

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**[Release No. 34–36145; File No. SR–NASD–93–38]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Injunctive Relief in Intra-Industry Disputes and Certain Other Changes to the NASD Code of Arbitration Procedure

August 23, 1995.

On August 11, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends the Code of Arbitration Procedure (''Code'')[4] by: (1) amending Sections 22 and 44; and (2) adding a new Section 47 to the Code as a one year pilot program relating to procedures governing applications for interim injunctive relief in intra-industry disputes under Section 8 of the Code.[5]

Notice of the proposed rule change, together with the substance of the proposal as amended by Amendment No. 1, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34355, July 12, 1994) and publication in the **Federal Register** (59 FR 36465, July 18, 1994). Six comment letters were received.[6] This order approves the proposed rule change.

### I. Introduction

The rule change approved today is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. The NASD has indicated that certain NASD member firms have been seeking injunctions in court against registered representatives who move to other firms, presumably to enforce non-competition covenants.[7] The rule change approved today is intended principally to facilitate the disposition of employment disputes and related disputes concerning whether such registered representatives may transfer their accounts to their new firms.[8]

### II. Description of Proposed Rule Change

*A. Section 22—Peremptory Challenge to Arbitrator Who Handled Request for Injunction*

Section 22[9] has been amended to except proceedings for injunctive orders under new Section 47 from the provision granting a party one peremptory challenge to an arbitrator. As discussed further *infra,* the NASD has stated that this provision is intended to ensure that there are no unnecessary delays in processing requests for temporary injunctive relief.

*B. Section 44—Non-refundable Surcharge for Expedited Proceedings*

Section 44 imposes a non-refundable surcharge of $2,500 on all parties in an expedited proceeding. The rule change provides for expedited proceedings in connection with a request for interim injunctive relief under new Section 47 and as a result of a court granting injunctive relief. The rule change amends Section 44(h) to provide that the total surcharge of $2,500 is to be paid initially only by the party or parties requesting expedited proceedings.

Under new Section 47(g), an arbitration will proceed in an expedited manner if a court has issued a temporary injunction even if no party has requested expedited proceedings. Accordingly, for purposes of the assessment of fees in Section 44(h), a party will be deemed to have requested expedited proceedings if a court issues a temporary injunction for which it has applied.[10] In addition, the rule change provides that the arbitrator may require a party to reimburse another party for a surcharge it has paid.

*C. Section 47—Procedure for Granting Interim Injunctive Relief*

The introduction to new Section 47 states that arbitrators may grant interim injunctive relief in intra-industry disputes and clarifies the ability of parties to seek temporary injunctive relief in court if they wish. The introduction states that parties may seek either an ''interim injunction'' or a ''permanent injunction'' within the arbitration process, that new Section 47 contains the procedure for obtaining an interim injunction, and notes that subsection (g) of new Section 47 describes the effect of court-imposed temporary injunctions on an arbitration proceeding. A party that seeks temporary injunctive relief with respect to an intra-industry dispute must file a claim for permanent relief with respect to the same dispute simultaneously with the Director of Arbitration (''Director''), even if the request for temporary injunctive relief has been made in court.[11] Finally, the introduction clarifies that Section 25(a) governs

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[11] 17 CFR 200.30–3(a)(12).

[1] The NASD initially submitted the proposed rule change on July 13, 1993. Amendment No. 1 made technical changes to the text of the rule. *See* Letter form Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (February 8, 1994). Amendments Nos. 2 and 3, submitted after publication of notice of the proposed rule change in the **Federal Register**, also were minor clarifying and technical amendments, the text of which may be examined in the Commission's Public Reference Room. *See* Letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Ethan Corey, Attorney, Over-the-Counter Regulation, Division of Market Regulation, SEC (April 28, 1995) and Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual,* Code of Arbitration Procedure, (CCH) ¶¶ 3701 *et seq.*

[5] *NASD Manual,* Code of Arbitration Procedure, Art. II, Sec. (CCH) ¶ 3708.

[6] *See* Letter from David E. Rosedahl, Managing Director and General Counsel, Piper Jaffray, Inc. (''Piper'') to Brandon Becker, Director, Division of Market Regulation, Commission, dated March 31, 1994; Letter from Michael J. McAllister, Esq., Lane & Mittendorf (''Lane'') to Jonathan G. Katz, Secretary, Commission, dated July 29, 1994; Letter from John W. Shaw, Esq. and Matthew V. Bartle, Esq., Bryan Cave on behalf of Sutro & Co. to Jonathan G. Katz, Secretary, Commission, dated August 8, 1994 (''Bryan Cave Letter''); Letter from Joel E. Davidson, Senior Vice President and Deputy General Counsel, PaineWebber Incorporated (''PaineWebber'') to Jonathan G. Katz, Secretary, Commission, dated August 8, 1994 (''PaineWebber Letter''); Letter from Cliff Palefsky, Esq., National Employment Lawyers Association (''NELA'') to Jonathan Katz, Secretary, Commission, dated August 10, 1994; Letter from Walter Baumgardner, Esq. (''Baumgardner'') to Jonathan Katz, Secretary, Commission, dated February 17, 1995.

[7] *See* Letter from Elliott R. Curzon, Assistant General Counsel, NASD to Ethan Corey, Attorney, Division of Market Regulation, SEC (December 16, 1994) (available in Commission's Public Reference Room).

[8] *Id.*

[9] *NASD Manual,* Code of Arbitration Procedure, Art. III, Sec. 22 (CCH) ¶ 3722.

[10] *See* Amendment No. 2, *supra* n. 1.

[11] *Id.*